

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS

MATTHEW DAVIS, )  
                    )  
                    Plaintiff, )  
                    )  
vs.                 ) Case No. 06-cv-0336-MJR  
                    )  
MADISON COUNTY, ILLINOIS, )  
ROBERT HERTZ,         )  
DENNIS FISCHER,        )  
JOSEPH GULASH,        )  
ROBERT HOLLENBECK,    )  
BRAD BESSON and       )  
DIANE FRITSCHLE,       )  
                    )  
                    Defendants. )

ORDER REGARDING DISMISSAL and TRIAL

REAGAN, District Judge:

Pursuant to the parties' representations to the Honorable Clifford J. Proud at the July 31<sup>st</sup> final pretrial conference, the joint "Stipulation of Dismissal with Prejudice" filed August 5, 2009 (Doc. 117), and the August 6, 2009 Final Pretrial Order signed by counsel herein (Doc. 118), the Court DISMISSES the following claims and parties (each party to bear his or her own costs).

1. All claims asserted by Plaintiff Davis against Defendants Schaake, Moore, Poston, Gilbert, Young and Chiurato;
2. Count III of the Second Amended Complaint, alleging an equal protection violation;
3. Count IV of the Second Amended Complaint, alleging retaliation; and
4. Count VI of the Second Amended Complaint, alleging a First Amendment violation relative to magazines.

In accord with Federal Rule of Civil Procedure 41(a), the Court CONSTRUES the stipulation (Doc. 117) as an unopposed motion for voluntary dismissal and GRANTS it. Dismissal shall be WITH PREJUDICE. All claims against Defendants Schaake, Moore, Poston, Gilbert, Young and Chiurato now have been dismissed. Judgment will be entered accordingly at the close of the entire case.

Due to the dismissal of various claims and Defendants, and for clarity of the record at trial, the Court ORDERS Plaintiff's counsel to file a Third Amended Complaint which lists only the remaining Defendants and claims and which uses Arabic numbers (e.g., Counts 2 and 3) as opposed to Roman numerals (e.g., Counts II and III). The Third Amended Complaint should be filed by August 19, 2009. It cannot contain any new claim or new Defendant.

Magistrate Judge Clifford J. Proud has certified this case trial-ready (see Doc. 119). The claims that remain for trial are directed against 7 Defendants:

- (1) Madison County,
- (2) Robert Hertz,
- (3) Dennis Fischer,
- (4) Joseph Gulash,
- (5) Robert Hollenbeck,
- (6) Brad Besson, and
- (7) Diane Fritschle.

These claims/Defendants have been set for trial before the undersigned District Judge on September 21, 2009.

ALL FUTURE PLEADINGS should be styled to list these seven (and only these seven) Defendants. Failure to comply with this directive may result in pleadings being STRICKEN.

As noted in Judge Proud's August 6<sup>th</sup> Order (Doc. 118), any motions in limine must be filed by August 12, 2009, with responses thereto filed by August 22, 2009.

The undersigned District Judge will conduct a status conference/hearing at 9:30 am on September 9, 2009. If oral argument is needed on any of motions in limine, Judge Reagan will hear argument at that time.

Counsel also should be prepared to address the September 21<sup>st</sup> trial date and any scheduling problems pertaining thereto. The Court had set aside 3.5 days on its docket for this case but has learned that counsel predict a 4- to 5-day trial. Apparently, an issue also exists regarding the fact that the first day of trial overlaps with the solemn Islamic religious observance of Ramadan, raising a potential concern that Plaintiff will be fasting on the day counsel intended to call him to testify.

Finally, because the docket sheet does not indicate that consent forms were provided to all parties herein, the Court DIRECTS the Clerk of Court to provide the "Consent to Trial By United States Magistrate Judge" form to counsel of record (and make a staff notes entry reflecting same). Adverse consequences will not result from any party withholding consent.

IT IS SO ORDERED.

DATED this 11<sup>th</sup> day of August 2009.

s/ Michael J. Reagan  
MICHAEL J. REAGAN  
United States District Judge